

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

John Beedle,  
Complainant,

vs.

**ORDER DENYING PETITION  
FOR RECONSIDERATION**

Minneapolis Public Schools,  
Respondent.

On February 19, 2013, John Beedle (Complainant) filed a Complaint with the Office of Administrative Hearings (OAH) alleging that the Respondent Minneapolis Public Schools violated Minn. Stat. §§ 13.03, subd. 3(f) and 13.05 by failing to provide information sought in accordance with the Minnesota Government Data Practices Act (Data Practices Act). Pursuant to Minn. Stat. § 13.085, subd. 3(a), the Chief Administrative Law Judge assigned the matter to Administrative Law Judge Manuel J. Cervantes on February 20, 2013.

After reviewing the Complaint and supporting materials, the Administrative Law Judge determined that the Complaint did not present sufficient facts to establish probable cause to believe that a violation of the Data Practices Act occurred. Accordingly, by Order dated April 8, 2013, the Administrative Law Judge dismissed the Complaint.

On April 19, 2013, the Complainant filed a petition for reconsideration of the Administrative Law Judge's Order of Dismissal with the Chief Administrative Law Judge, pursuant to Minn. Stat. § 13.085, subd. 3(c).

Michael Cain, Attorney at Law, represented John Beedle (Complainant).

Amy Moore, Assistant General Counsel, Minneapolis Public Schools, Office of the District General Counsel, represented the Minneapolis Public Schools - Special School District No. 1 (Respondent or District).

Based on the record herein, and for the reasons stated in the following Memorandum, the Chief Administrative Law Judge makes the following:

## ORDER

**IT IS HEREBY ORDERED** that Complainant's Petition for Reconsideration is **DENIED**.

Dated: April 25, 2013

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Chief Administrative Law Judge

## NOTICE

This order is the final decision in this matter under Minn. Stat. § 13.085, subd. 5(d), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

### Factual Background

On June 22, 2012, Complainant's attorney, Michael Cain, sent a letter via email to Scott Weber, the District's Responsible Authority, requesting that he be allowed to view certain data pursuant to Minn. Stat. § 13.03. Mr. Cain's email was addressed to Mr. Weber's email address at [scott.weber@mpls.k12.mn.us](mailto:scott.weber@mpls.k12.mn.us) and copied to [mps.datarequest@mpls.k12.mn.us](mailto:mps.datarequest@mpls.k12.mn.us). Mr. Cain stated that he was seeking the following data: "Minneapolis Public Schools Attendance Review Board reports or 'SARB Report Cards'. I am requesting the semi-annual reports from 2001 to 2008."<sup>1</sup>

On July 9, 2012, Mr. Weber responded to Mr. Cain, by email from [mps.datarequests@mpls.k12.mn.us](mailto:mps.datarequests@mpls.k12.mn.us), as follows:

Thank you for your request. The district cannot provide the specific data that you are requesting because it does not exist. If you wish to make additional requests for data, please do so through the proper channels ([MPS.DataRequests@mpls.k12.mn.us](mailto:MPS.DataRequests@mpls.k12.mn.us)).<sup>2</sup>

The "MPS" email address that Mr. Cain used in his June 22<sup>nd</sup> correspondence was misspelled as "mps.datarequest@..." instead of "mps.datarequests@...." As a result, it

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<sup>1</sup> Complaint Exhibit A,

<sup>2</sup> Complaint Exhibit B.

had not been delivered to the “mps.datarequests...” mailbox.<sup>3</sup> Apparently, Mr. Weber had responded to the email addressed to “scott.weber@mpls.k12.mn.us”.

On November 9, 2012, Mr. Cain sent a second letter via email to Mr. Weber addressed again to “scott.weber@mpls.k12.mn.us” and to the erroneous MPS address “mps.datarequest@mpls.k12.mn.us.” The email asked Mr. Weber to consider the attached letter as a data request under Minn. Stat. § 13.03. That letter stated, in part:

The following information is sought pursuant to Minnesota's Government Data Practices Act:

- 1) MPS SARB Reports (semi-annual) from 2001-2008;
- 2) Center for Training and Careers (CTC) Report Cards 2001-2008;
- 3) Employment and Termination file for Merle Bell-Gonzales;
- 4) All MPS audits for Center for Training and Careers;
- 5) General Counsel Investigation Report of CTC; and
- 6) The Management Agreements and amendments between MPS and Little Feathers Group together with MPS written approvals.<sup>4</sup>

Mr. Weber did not respond to this second email. On December 21, 2012, Mr. Cain sent a follow-up email to Mr. Weber addressed to “scott.weber@mpls.k12.mn.us” and again to “mps.datarequest@mpls.k12.mn.us.”<sup>5</sup> There was no response to this follow up email from the District.

The Complainant filed this Complaint on February 19, 2013. The Complainant asserted that he believed the data requested did exist and that it should be in the District's custody.<sup>6</sup> The Complainant alleged further that the District's failure to respond to the subsequent November 9<sup>th</sup> data request and December 21<sup>st</sup> follow-up email violated Minn. Stat. § 13.03, subd. 3(f).

After receiving the Complaint, District counsel Amy Moore contacted various District staff to search for relevant documents. The searches turned up four documents responsive to Mr. Cain's November 9, 2012, request. Ms. Moore sent Mr. Cain copies of the documents via email of March 5, 2013.<sup>7</sup> On March 11, 2013, Ms. Moore sent Mr. Cain an email summarizing the status of the information requested by him.<sup>8</sup>

In its response to the Complaint, the District stated that it has no documents responsive to the Complainant's initial June 22, 2012, request for Attendance Review Board reports or SARB Report Cards from 2001 to 2008 because that Board no longer exists or because the SARB Reports were created by Hennepin County and therefore

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<sup>3</sup> The Administrative Law Judge took notice that internet email addresses are not case sensitive, but that any spelling error in an address will cause email delivery to fail.

<sup>4</sup> Complaint Exhibit B.

<sup>5</sup> Complaint Exhibit D.

<sup>6</sup> Complaint at 3.

<sup>7</sup> District Response, Affidavit of Amy Moore, Exhibit 2.

<sup>8</sup> District Response, Affidavit of Amy Moore, Exhibit 2.

the District was not required to maintain them by the “Public Records Act.” The District also noted that Mr. Cain’s subsequent emails of November 9 and December 21, 2012, were not correctly addressed to Respondent’s data request email address and, if they went to Mr. Weber’s email address, they were not recognized or noticed by Mr. Weber as data requests. Finally, the District asserted that there were never any MPS or MPS General Counsel audits of CTC, nor Management Agreements or approvals between MPS and “Little Feathers Group.”<sup>9</sup>

On April 8, 2013, the Administrative Law Judge issued an Order finding no probable cause to believe that the District violated the Data Practices Act. The ALJ found that the District had timely responded to the Complainant’s initial data request that was addressed to Mr. Weber’s work email, and that the Complainant’s attorney was thereafter clearly instructed to address any further requests to the District’s official data request email address. The ALJ found that Mr. Cain failed to address his subsequent requests to the District’s correct email address. As a result, the District did not respond to these requests. In any event, after the Complaint was filed, the District’s counsel submitted evidence that it searched for responsive documents and turned up four documents, which it sent to Mr. Cain. Based on this record, the ALJ found the Complainant failed to present sufficient facts to believe the District violated the Data Practices Act by failing to provide access to data currently in its possession or by failing to retain data previously in its possession.

On April 19, 2013, the Complainant requested reconsideration of the Dismissal Order. Minn. Stat. § 13.085, subd. 3(c), provides that the Chief Administrative Law Judge must review a petition for reconsideration within ten business days to determine whether the assigned administrative law judge made a “clear material error.”

### **Timeliness of Petition**

Minn. Stat. § 13.085, subd. 3(c), states that “[a] petition for reconsideration may be filed no later than five business days after a complaint is dismissed . . . .” The Order dismissing the Complaint in this matter was entered on April 8, 2013, and was served on the parties by United States mail on that same day. The Office of Administrative Hearings, in conformance with the Minnesota Rules of Civil Procedure, allows three days to be added to a prescribed filing deadline when an order is served by U.S. mail.<sup>10</sup> The Complainant’s petition was mailed to the OAH on April 17, 2013, and received on April 19, 2013.<sup>11</sup> The Complainant’s counsel attests in his Affidavit of Service that the petition was also faxed to OAH and opposing counsel on April 17, 2013.<sup>12</sup>

Under the rules of the Office of Administrative Hearings, filings are effective on the date that the office receives the fax transmission. Filings made by other means are

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<sup>9</sup> District Response at 2-4. The District’s Response provided a link to the: Investigative Report, Center for Training and Careers, Office of the State Auditor, September 23, 2010.

<sup>10</sup> See, Minn. R. Civ. Pro. 6.05, Minn. R. 1400.6100, subp. 2.

<sup>11</sup> Affidavit of Service attached to petition dated April 17, 2013.

<sup>12</sup> *Id.*

effective on the date the office receives the filing.<sup>13</sup> The OAH has no record of receiving Complainant's fax transmission. Receipt of the mailed petition by the OAH on April 19, 2013, renders the petition untimely by one day under Minn. Stat. § 13.085, subd. 3(c). However, given counsel's sworn Affidavit attesting that the petition was faxed to OAH on April 17, 2013, and erring on the side of caution, the Chief Administrative Law Judge will treat the petition as timely filed and consider the arguments on the merits.

## **Reconsideration Argument**

The Complainant maintains that Mr. Weber's failure to respond to the November and December emails requesting data, after having responded to the initial email sent in June, suggests that Mr. Weber chose to ignore the requests "out of spite" and raises credibility issues sufficient to require a hearing. The Complainant asserts that the "Respondent has not provided any facts on the record to support [the claim] that Scott Weber did not receive the emails sent directly to him."<sup>14</sup> The Complainant's attorney, Mr. Cain, also notes in his Affidavit that counsel for the District "admitted" that Mr. Weber's June 22<sup>nd</sup> response was "poorly worded."<sup>15</sup>

## **Analysis**

Minn. Stat. § 13.03, subd. 3, requires government agencies to provide access to public data or, if the data is not public, to timely inform the person making the request of the basis for the denial of access, including the specific statutory cite for the denial.<sup>16</sup> Minn. Stat. § 13.05, governs the duties of the government agency's responsible authority relating to collecting, protecting and summarizing data.

The Complaint made two allegations: (1) that the District had information requested by the Complainant on June 22, 2012, that the District was not providing; and (2) that the District failed to respond to subsequent requests for information dated November 9, 2012, and December 21, 2012. In its reconsideration petition, the Complainant appears to be mainly arguing that there were sufficient facts to believe the District failed to timely respond to the subsequent data requests in violation of the Act. The Complainant states in his petition that:

At a minimum, a hearing should be scheduled to analyze whether Scott Weber should have responded, as responsible authority for MPS, to a data request or a follow up communication emailed directly to him.<sup>17</sup>

Under Minn. Stat. § 13.085, subd. 3(c), the Chief Administrative Law Judge must grant a petition for reconsideration if he determines that the assigned Administrative Law Judge made "a clear material error" in dismissing the complaint.

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<sup>13</sup> Minn. R. 1400.5550, subp. 5.

<sup>14</sup> Petition for Reconsideration at 3.

<sup>15</sup> Affidavit of Michael Cain at ¶ 2.

<sup>16</sup> Minn. Stat. § 13.03, subd. 3(f).

<sup>17</sup> Petition for Reconsideration at 4.

After reviewing the petition for reconsideration and the record in this matter, including the Order of Dismissal, the Complaint with attachments, and the District's response to the Complaint, the Chief Administrative Law Judge finds that the assigned Administrative Law Judge did not commit a clear material error by dismissing the Complaint at the probable cause stage. The Complainant failed to put forward sufficient facts to establish a reasonable belief that the District had information requested by the Complainant that it was not providing, that it failed to retain data previously in its possession, or that it failed to respond in violation of Minn. Stat. §§ 13.03, subd. 3(f), and 13.05. Instead the record established that the Complainant's November 9 and December 21, 2012, data requests were incorrectly addressed to the District and that once the District received actual notice of the Complainant's request for data, it complied with the Act by providing a prompt and thorough response.

### **Conclusion**

The Order dismissing John Beedle's Complaint alleging violations of Minn. Stat. §§ 13.03 and 13.05 by the Minneapolis Public Schools was not the result of clear material error. The Petition for Reconsideration is denied.

**R. R. K.**